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26

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/607,068 | 06/25/2003 | Henry Welling Lane | DIOP-6900 | 6556 |
| 34209 | 7590 | 10/18/2004 | EXAMINER | |
| LAW OFFICE OF DEREK J. WESTBERG 2 NORTH SECOND STREET, SUITE 1390 SAN JOSE, CA 95113 | | | MAI, HUY KIM | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2873 | |

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,068

Applicant(s)

LANE ET AL.

Examiner

Huy K. Mai

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 48-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 48-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/02/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-30,48-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abraham (6,450,639) in view of Matera (2004/0017540).

Abraham discloses in Figs.1, 2 an eyewear comprising: a frame having a brow web 112 extending approximately horizontally from a top portion of the frame, the eyewear includes ventilation apertures 122 or spacer member 16 in the second embodiment for preventing the fog from the lenses. However Abraham does not discuss the blockage of light from entering through the apertures. Matera discloses an anti-fogging eyewear wherein the apertures formed on the top portion of the frame and having an internal side that is substantially sloped with respect to a top surface of the frame. Therefore, it would have been obvious at the time the invention was made to a person having skilled in this art to modify the eyewear in the Abraham reference in light of Matera's teachings by forming the ventilation apertures having an internal side that is substantially sloped with respect to a top surface of brow web for blocking the entering through the apertures as discussed by Matera as the same the applicant does. Such a modification would not change the scope of the invention in the Abraham reference.

Regarding claims 2-5,12,20-22,24,52-55,61 although Abraham in view of Matera device does not teach the exact the shape and size of the apertures as that claimed by applicant, the shape,

Art Unit: 2873

size, dimension differences are considered obvious choices and are not patentable unless unexpected results are obtained from these changes. Therefore, it would have been obvious to a person having ordinary skill in this art to modify the Abraham in view of Matera device by forming apertures having the same shape and size as the applicant's. Such a modification would have no functional differences from the Abraham in view of Matera device.

Regarding method claims 48,49, it should be noted that although claims 48 and 49 being "method claims", the method steps consist of the broad steps of "molding", "attaching" and "attaching" etc and therefore these steps would be inherently satisfied by the apparatus of the references as modified.

Information Disclosure Statement

3. The information disclosure statement filed April 2, 2004 is acknowledged.

Response to Arguments

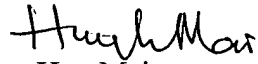
4. Applicant's arguments with respect to claims 1-30,48-62 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (571) 272-2328. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 2873

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.


Huy Mai
Primary Examiner
Art Unit 2873

HKM/
October 14, 2004